

groups (Alternative 1, below) or to three (3) groups (Alternative 2, below), instead of Examiner's proposed four (4) groups, as follows:

Alternative 1:

Group A, composed of Examiner's suggested Group I (claims 4-7 and 11-13); and

Group B, composed of Examiner's suggested Groups II-IV (14-20, 21-23 and 24-26).

Alternative 2:

Group A, composed of Examiner's suggested Group I (claims 4-7 and 11-13);

Group C, composed of Examiner's suggested Groups II and III (14-20, 21-23); and

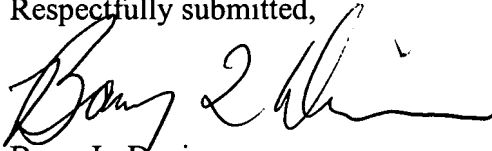
Group D, composed of Examiner's suggested Group IV (24-26).

Minimally, applicants respectfully assert that Examiner's proposed Groups II and III should be combined into one Group "C" (Alternative 2, above), because the inventive step in each case is the administration of an agent that binds with high affinity to the extracellular domain ("ECD") of HER-2. While it is true that, as currently drafted, the scope of claims within Examiner's two proposed Groups II and III is different (*i.e.*, where, for Group II, the "agent," according to the Markush group of claims 14 and 18, is based on about 50-79 amino acids of SEQ ID NO:1, about 80-419 amino acids of SEQ ID NO:2, on a monoclonal antibody, or combinations thereof, whereas, the claims of Group III recite an agent of about 50-79, or about 69-79 amino acids of SEQ ID NO:1), the specification supports the use of an agent, or a derivatized agent of the broader Markush group for both of Examiner's proposed Groups II and III. Therefore, a single search should suffice for both proposed Groups II and III.

The same argument supports the grouping of all three of Examiner's proposed Groups II, III and IV into a new group, B (Alternative 1, above). This is because, all three Groups depend on using agents (SEQ ID NO:1-derived agents, SEQ ID NO:2-derived agents, or antibodies) that bind to the ECD of HER-2, or to p68HER-2 (comprising ECD sub-region of HER-2), and a single search should suffice for proposed Groups II, III and IV.

Applicants respectfully request examination and consideration of elected claims 4-7 and 11-13 (Group I), but request that the Examiner's restriction requirement be amended according to one of the alternatives described herein, and that if so amended, applicants be afforded the opportunity to "shift" the election if desired, under MPEP 819.01.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barry L. Davison", written over the typed name.

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